

Around the Water Cooler

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Q&A with Bruce Meckler

August 15, 2011



Bruce Meckler, co-chair of Meckler Bulger Tilson Marick & Pearson, partner Brian Williams and associate Jeffrey Greenspan recently prevailed in a case that sets Illinois precedent in granting absolute immunity for lawyers acting as child representatives in divorce cases. He can be reached at bruce.meckler@mbtlaw.com.

1. Briefly describe the case.

In the divorce proceedings of Milijana Vlastelica, Jeffrey Brend was appointed by the Court as child representative for her minor son pursuant to Section 506(a) of the Illinois Marriage and Dissolution Act. Following those proceedings, Ms. Vlastelica sued Mr. Brend and his law firm in the Cook County Circuit Court claiming negligence and violations of parental rights in the course of his duties. Ms. Vlastelica asserted claims individually and on behalf of her minor son. The Circuit Court granted Mr. Brend's motion to dismiss, finding that he was absolutely immune from suit as a child representative, and dismissed all claims with prejudice. Ms. Vlastelica

appealed. In a case of first impression, the Appellate Court affirmed, ruling that a child representative is an arm of the court that assists in the neutral determination of the child's best interest, and therefore, is absolutely immune from suits arising from these activities.

2. What is the significance of the ruling?

By providing absolute immunity to child representatives, the Appellate Court encourages lawyers to serve in that capacity. By statute, a child representative must be concerned with the best interest of the child. Granting immunity confirms that the child's best interest is of the utmost importance, even to the exclusion of an action for damages. Child representatives generally are appointed in cases where the parents cannot agree on what is best for the child. A child representative must be free to fulfill his duties without the threat of harassment from those who may be dissatisfied with what is ultimately decided to be in the child's best interest. Absent immunity, the child representative could perform his duties to absolute perfection and still be subject to the threat of lawsuits from dissatisfied parents. The Court's ruling allows the child representative to perform his duties free from harassment and outside influence.

Few, if any, other states have court-appointed child representatives, who both investigate and advocate in the determination of the child's best interest. While some states grant guardians ad litem immunity, guardians ad litem generally do not have the same statutory duties as child representatives. The Illinois Appellate Court is at the forefront in deciding that the advocacy function in

connection with the best interest determination does not preclude immunity.

3. What were the challenges with the case?

No Illinois statute confers immunity on a child representative. Therefore, it was necessary to convince the Appellate Court that immunity could be provided by common law. However, no appellate court in Illinois had ever ruled on the issue. It was necessary to convince the Appellate Court that immunity was warranted even if that meant denying a child or parents a civil remedy for malfeasance.

There were also challenges because of the dual or "hybrid" function of a child representative. A distinction had to be drawn between an attorney for a child, who advocates for the wishes of the child, and a child representative who must advocate for what he believes to be in the child's best interest.

4. What sort of precedent does it set?

The case set new precedent in Illinois by providing absolute immunity from civil liabilities for child representatives for actions taken in the course of their court-appointed duties. The Appellate Court made clear that this immunity extends even to those activities the child representative undertakes in advocating for what he believes to be in the best interest of the child. The case confirms established precedent that the child's best interest is paramount in custody matters and bolsters that fundamental purpose by allowing the child representative to pursue the child's best interest, even in difficult cases, without the risk of undue influence or liability.